IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

JULIE MILLER, Plaintiff,

v.

EQUIFAX INFORMATION SERVICES, LLC, a foreign limited liability company, Defendant.

Case No. 3:11-CV-1231-BR

July 24, 2013

Portland, Oregon

TRANSCRIPT OF PROCEEDINGS

(Excerpt of the Testimony of Anne Fortney)

BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

COURT REPORTER: AMANDA M. LeGORE, RDR, CRR, FCRR, CE
U.S. COURTHOUSE
1000 SW Third Avenue, Suite 301
Portland, OR 97204
(503)326-8184

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL BAXTER
JUSTIN BAXTER
Baxter & Baxter, LLP
8835 SW Canyon Lane, Suite 130
Portland, OR 97225
(503)297-9031
michael@baxterlaw.com
justin@baxterlaw.com

FOR THE DEFENDANT: JEFFREY EDELSON
Markowitz, Herbold, et al.,
1211 SW Fifth Avenue
Suite 3000
Portland, OR 97204
(503)295-3085
jeffedelson@mhgm.com

PHYLLIS SUMNER
LEWIS PERLING
King & Spalding, LLP
1180 Peachtree Street, N.E.
Suite 1700
Atlanta, GA 30309
(404)572-4799
psumner@kslaw.com
lperling@kslaw.com

INDEX

-oOo-

(The following excerpted proceedings were held on Wednesday, July 24th, 2013; 1:33 p.m.)

THE COURT: Would you all please rise for the jury.

(Jurors enter.)

THE COURT: Thank you, everyone. Please be seated.

So, jurors, good afternoon.

Just before I sent you out for the noon recess, you may recall Mr. Baxter announced that plaintiff rests. That means, Ms. Miller's counsel have now presented all the evidence that there is going to be presented in her case-in-chief.

So now we're turning to Equifax, to see if it has any evidence to offer. And, indeed, it does have three witnesses to offer to you. One of them is before you now.

Would you stand, please. Face the jury. Raise your right hand to be sworn.

(Witness sworn.)

THE WITNESS: I do.

THE CLERK: Please take a seat.

THE COURT: And when you're situated there, bring yourself as close as you can to the microphone.

Please tell us your full name, and spell all of it.

THE WITNESS: My full name is Anne Price Fortney. Anne is spelled with an E, A N N E. Price, P R I C E. Fortney, F O R T N E Y.

THE COURT: Thank you.

Counsel.

DIRECT EXAMINATION

BY MS. SUMNER:

Q. Good afternoon, Ms. Fortney.

A. Good afternoon.

Q. If you could just start off, please, and tell the jurors what your current position is and responsibilities.

A. Yes. I'm a lawyer, and I'm a partner with a law firm called Hudson Cook.

My law firm and I specialize in compliance in the field of consumer financial services. We help companies comply with the Fair Credit Reporting Act and similar laws.

Q. And how many years have you been involved in practicing in federal and state consumer protection laws?

A. Well, I got my start with J.C. Penney back in 1976. Oh, what? That's about 37 years. And at that time, I was in the Washington office with the Penney Company. And Penney was one of the largest credit card issuers in America. It was difficult for consumers to get bank cards at that point.

Q. All right. Let's back up just a little bit. And if you wouldn't mind, walk the jury through your educational background.

A. Sure.

I went to Mary Washington College, which was then a women's college, University of Virginia. I went to Georgetown

University Law Center. And -- and I've been practicing law since 1969.
Q. And have you also participated in other programs, in terms of training at other universities?
A. I was -- went one year to college at -- in Aix-en-Provence, and I also did some post-graduate work at Harvard University, when I was with the Federal Trade Commission.
Q. Okay. Let's actually move to some of your other experiences. Because in your 37 years, I am sure you have not spent the entire time at the -- this law firm.
Could you just walk us through some of your -- and you don't need to spend a lot of time on this. But I think it would be helpful for you to walk through the various positions -- professional positions that you've held.
A. Yeah. As I said, I began -- oh, I'd been practicing law for a few years before I joined the Penney Company. But I had been more involved with just general consumer protection issues. But I really began to get into this industry at the Penney Company. And I was with them until 1982.
And then I went to work for the Federal Trade Commission. And at the Federal Trade Commission, I was the director of a division that enforces the Fair Credit Reporting Act and the other privacy laws on behalf of consumers. So I was basically representing -- I was a federal representative of

consumers at the Federal Trade Commission.

I left the Federal Trade Commission in the late '80s because I got married and my husband was in the Navy, and we had to move to Hawaii. Tough duty. Somebody had to do it. And I have been in private practice ever since. I've been with a couple of law firms. But about ten years ago I joined Hudson Cook, because I wanted to be able to concentrate my practice in the area of compliance in this field.

THE COURT: Could you slow down a bit, Ms. Fortney, when you are responding.

Go ahead, Counsel.

THE WITNESS: Sure.

BY MS. SUMNER:

Q. So as part of the compliance work that your firm does, has it done work for any of the three credit reporting agencies?

A. Yes. Our firm has about 2,000 clients, because we represent just about everyone in the consumer financial services industry. And the way we get to 2,000 clients is we also represent a lot of auto dealers who are creditors, under the law.

And -- and I -- because I specialize primarily in the area of the Fair Credit Reporting Act and privacy, I do work for the major consumer reporting agencies: Experian, TransUnion, and Equifax, to a certain extent. I have not done much work for Equifax ever, and I have done no work for Equifax

in the last year or so.

But I do respond to questions from primarily banks and finance companies as they try to comply with the Fair Credit Reporting Act. But I also do represent some reporting agencies.

THE COURT: Can you slow down a bit.

THE WITNESS: I'm sorry. I do talk too fast. I apologize.

THE COURT: It's really important that the jurors --

THE WITNESS: I know. I know.

THE COURT: -- are able to understand, and that we have a good record, without interruption.

Go ahead, Counsel.

BY MS. SUMNER:

Q. Thank you.

Ms. Fortney, if you can talk a little bit about some of the publications that you have in this area, and whether you have published any materials specifically on the Fair Credit Reporting Act?

A. Yes, I have. I have written articles for professional journals on the Fair Credit Reporting Act. I've also written a how-to-comply manual for the consumer reporting industry. How to comply with the Fair Credit Reporting Act.

I haven't written much recently, because I devote most of my time, other than the practice of law, to giving

presentations, at various professional associations, American Bar Association, the -- and others. And -- because it's difficult for even lawyers to keep up with all of the changes in the law in this area.

Q. And the materials that you -- or that were published, were those self-published or published by some other publication?

A. They were all published by some other publication.

Q. And could you name some of the publications that have published your work?

A. *The Quarterly Report of the Conference on Consumer Finance Law*. The -- I think that's the one that I published in most often, most recently.

Credit World was another one. And I'm sure there's some others. I just don't recall offhand.

Q. Okay. And have you also acted as an expert on FCRA issues?

A. I do, from time to time; it's not a major part of my work. Again, I spend most of my time dealing with these compliance issues.

I would say probably about -- maybe 10 percent, maybe 15 percent of my time, on average, is involved in writing expert reports or otherwise serving as an expert witness.

Q. Could you tell the jury a little bit about the purposes of the Fair Credit Reporting Act.

A. The Fair Credit Reporting Act is designed to balance the

need of the credit reporting industry for complete and accurate information on consumers. Balance those needs with the rights of consumers to the privacy and confidentiality and fair treatment of that highly sensitive information.

Q. And does the FCRA require perfect consumer reports?

A. No. And, in fact, Congress has repeatedly said, and the federal regulatory agencies have said, perfection is impossible given the volume of -- of consumer reports, given the number of files that are out there, given the speed at which this information is disseminated, and also because it's an automated system. It's also a system that runs pretty much on a voluntary basis.

No law requires a bank or other furnisher to give information to a consumer reporting agency, and no law requires a consumer reporting agency to provide a consumer report to a bank.

And so it's basically a voluntary system. It is a system that has evolved; evolved over the last hundred years or so. And most significantly in the last 20 or 30 years.

Q. So how would you characterize the basic standard that relates to the Fair Credit Reporting Act?

A. Well, as I said, it's a balancing of -- of competing interests, competing needs.

And the standard generally is one of reasonableness. What is reasonable under the circumstances? And that term

"reasonable" appears repeatedly throughout the Fair Credit Reporting Act.

Consumer reporting agencies are required to have reasonable procedures to ensure the accuracy of information in consumer reports. They have reasonable procedures to address disputes. Everything in the act is based on a standard of reasonableness.

Q. Now, if you can address a little bit the role of credit reports in our U.S. economy and the -- how that information is shared between different groups.

A. Okay. Again, I'm relying here primarily on -- not just my expertise but also the findings of Congress in this area and also the Federal Trade Commission; and a new agency, the Consumer Financial Protection Bureau, which was created a couple of years ago to assure the -- the protective rights of consumers in the field of consumer financial services.

And what they all have said, including fairly recent testimony by the director of the Consumer Financial Protection Bureau, is -- is that our economy really rests on -- in large part, on the consumer reporting industry.

This is the industry that enables creditors to make informed decisions about consumers, gives consumers access to mortgage loans, credit cards, and even auto loans. Now, the fact that someone can go into an auto dealership and drive away with a car within minutes or hours, after you finish

negotiating with the dealer, that does not exist in most countries.

The fact that you can get an instant credit card in -- in a retail department store, that is because of the consumer reporting system.

And there have also been studies showing that on average, Americas pay two percent less for our mortgage -- our mortgages than in any other country because of our consumer reporting industry. It is a -- it is the foundation, as I said, of the U.S. consumer economy.

Q. And is there a certain expectation of the speed of processing the information at this point in our economy?

A. Yes, there is. That's why I mentioned the fact that you can go into -- actually, you've all been in a department store, they're offering you 10 percent off, or some other incentive, if you get their credit card. And you can get it right then and there. The reason you can get it right then and there is because there is an instantaneous report from a -- a CRA, a consumer reporting agency, to the store. So this -- this all happens with great speed and with remarkable accuracy.

Q. Now, you mentioned a few moments ago Congressional findings. You mentioned the FTC and the CFPB. A mouthful.

Are those -- first, if you can explain the role of the regulators, and then also -- well, I won't pose two questions. Just start off with explaining the role of the FTC

and CFPB.

A. For many years the Federal Trade Commission was the primary agency regulating the consumer reporting industry.

And then when Congress created the Consumer Financial Protection Bureau, it consolidated a number of the functions of other regulatory agencies into this new agency. So although the Federal Trade Commission still has some responsibilities in this area -- and we'll talk about studies and things like that the FTC has done -- the principal agency now is the Consumer Financial Protection Bureau, and they exercise oversight in this industry. And they also, along with the Federal Trade Commission, enforce the laws when any of these companies may violate the law.

Q. Through your years in this area of expertise, have you followed Congressional findings, FTC enforcements, and the more recent CFPB actions with respect to credit reporting agencies?

A. Yes, I have. I've been following them ever since 1976, and when I was with the Federal Trade Commission, and then even more recently in private practice -- practice, I've testified before Congress on issues involving credit reporting.

Q. Now, and as part of your following the guidance from these regulators and from Congress, has there been discussion about whether or not errors are inevitable in this process?

A. Yes. As I think -- I think I mentioned that -- there's actually direct Congressional language saying that -- that

errors are inevitable.

Q. Now, you did mention a little bit about the furnishers of -- of information to the credit reporting agencies.

Is there any requirement that they use any specific form of identification of a consumer when they are reporting that information?

A. No, there is not. And, in fact, that's one of the reason why furnishers will provide different information and sometimes incomplete information with respect to the consumers on whom they are furnishing the information.

Q. Does this -- well, what issues does that create for a credit reporting agency that is receiving information from furnishers that may not include the same identification items?

A. Yeah. I think, first of all, you have to understand the volume. We have -- I think it's 1.3 billion updates of information from the furnishers to the consumer reporting agencies each month. Each month. Billions of items of information are going into the consumer reporting agencies. And all of this information has been identified by the furnisher with a consumer in some way.

Well, the first issue is consumers often have similar names, last names. Also, furnishers don't have any standard way of reporting a first name. Names can be abbreviated, they can be misspelled. Addresses, consumers move around a lot. And -- and the agencies, the consumer reporting agencies

actually rely on updates from the furnishers, quite often, because consumers don't notify -- and they are really required to notify these consumer reporting agencies of changes in their address. So they rely on information from the furnishers about changes in address. The other issue that comes in is people don't always give or provide accurate information about their date of birth.

The final issue involves a Social Security number. There's a move on -- I think, on the part of some governments and some creditors, to truncate Social Security numbers.

There's also the error -- in other words, you just provide the last four -- or last six digits a Social Security number. There are also errors in the input of Social Security numbers.

So that creates an issue for the -- the CRAs, the credit reporting agencies, in trying to match the data that's coming in, these billions of items of information that are coming in, trying to match it to the correct consumer.

Q. So in addition to the variety of information that credit reporting agencies receive from furnishers, do the furnishers also rely on receiving information from consumers?

A. Yes, because it's the consumers, of course, who provide the information to the furnishers. It's consumers who complete the -- the applications for credit and who will often notify their creditors when they are changing their address.

Q. And in your opinion, do consumers sometimes provide information that is inaccurate to the furnishers?
A. Consumers could provide inaccurate information or, as indicated, the furnisher could take it down wrong. You have telephone applications. That information might be incorrectly recorded.
Q. So have you been involved in reviewing some of the mixed file procedures that Equifax has employed to address issues where information comes in that potentially relates to more than one consumer?
A. Yes, I have.
Q. And has this been an issue that has been -- that Equifax has -- has reviewed over time?
A. Yes. In fact, when you look at the procedures -- and you'll get to them in a minute -- what you see is the -- these procedures are constantly being reviewed, updated. Every time there's a modification to procedure, there's a notation of when it was made and who made it. So I think Equifax is, like the other CRAs that I know, updating these procedures, trying to improve the process.
Q. Okay. Let me back up for just a minute and ask you a little bit about the credit reporting industry. Is it your understanding that these regulators from the FTC, and now from the CFPB, do they work directly with the credit reporting agencies?

A. Well, they certainly -- I think that they work with the credit reporting agencies with a lot of interaction. There's always, in my experience, been interaction with the Federal Trade Commission. And now there's a lot of interaction with the representatives of the consumer reporting agency and the Consumer Financial Protection Bureau. Yes.

Q. Let me ask you if you are familiar with some agreement of assurances and consent de -- decrees involving the FTC in the early 1990s. Are you familiar with that?

A. I am very familiar.

Q. Okay.

A. And here's why.

When I was at the Federal Trade Commission, we had complaints about accuracy of information at consumer reporting agencies.

We investigated the consumer reporting agencies. We actually sued TransUnion; entered into an agreement with them. And we thought that we had addressed the problem.

What happened, though, was that problems were not really addressed, because we were focusing on the information, once it was in -- within the consumer reporting agency.

So these investigations by the Federal Trade Commission and the states' Attorney General really focused on the procedures that the agencies had -- or, I'm sorry, with these companies, these consumer reporting agencies had to

comply with the Fair Credit Reporting Act, including the input of the data and also resolving consumer disputes.

And what the -- the Government found is that there were in fact deficiencies. And that's why they entered into settlements with all of the consumer reporting agencies. This was an industry-wide problem. But this was a problem in the 1990s.

And in the early 1990s, credit reporting was the number one source of complaints at the Federal Trade Commission. Today, it isn't even on the top ten list.

By the way, identity theft is on the top -- is the number one complaint, not credit reporting.

So what happened? Well, two things happened. First of all, the industry got a wake-up call. They realized there's a problem here. They -- they developed some automated systems, automated systems for the input of information from -- from furnishers. This is the Metro 2 (phonetic) format, trying to create a standardized format in which information could be automatically provided; these billions of updates each month to the bureaus.

Also they developed the EOSCAR system --

THE COURT REPORTER: I'm sorry. I need you to speak slower, please.

THE WITNESS: They also developed the EOSCAR system.

BY MS. SUMNER:

Q. If you could spell that out for the court reporter.
A. EOSCAR is an acronym. It's E-O-S-C-A-R. And it stands for the electronic online -- I forget. I forget the acronym.
But, anyway, it's designed to -- it's -- what it is, it is the web-based computer software that enables the CRAs to communicate with furnishers about consumers' disputes, and also enables the furnishers to relay the results of their investigations of these disputes back to CRAs.
This is a system that was developed because there was revision in an amendment to the Fair Credit Reporting Act that essentially required the consumer reporting agencies to have an automated system. They developed this system. And, again, when the Federal Trade Commission and the Consumer Financial Protection Bureau have -- have looked at this system, they recognized that it does in fact provide for the resolution of -- of consumer complaints.
So we had a change in the industry in the early '90s. We also had some major improvements to the federal -- to the Fair -- Fair Credit Reporting Act. And those improvements really put more of an obligation on the furnishers to provide accurate information to the bureau -- to the consumer reporting agencies, and also to investigate the disputes.
So we had a major change in the law. We had changes in technology. And so I think that's the reason, today, that we don't have the percentage of complaints involving --

involving credit reporting involving consumer reporting agencies.

Q. And if I could just pause you there for a moment. And I would like for you to actually address this issue of consumer satisfaction and the changes that have occurred over time, since the '90s.

A. Um-hmm.

Q. You mentioned a number of system changes. But if you can focus on the changes in the consumer satisfaction as well.

A. Right. Yes. And because this is an area where the industry is constantly trying to improve, there are studies now -- studied by the Federal Trade Commission and a -- a study by a report by the Consumer Financial Protection Bureau.

The Federal Trade Commission reported in, I think it was, 2008 that 90 percent of consumers resolved their complaints regarding, you know, primarily accuracy and disputes. But involved -- resolved their complaints with the consumer reporting agencies before these were referred by the Federal Trade Commission to -- to the consumer reporting agencies for their resolution.

So -- in other words, the FTC found a 90 percent resolution basis before anybody else had to get involved.

What the Consumer Financial Protection Bureau reported in December of last year was that 95 percent of consumers were satisfied with the results of the

reinvestigations.

Q. Okay. Let's focus for a minute on issues with respect to mixed files.

Has the FTC provided guidance with respect to that and the -- sort of the evolution of that issue?

A. Yes. Congress directed the Federal Trade Commission to study this issue. And, in 2004, the FTC published a report of its investigation of the study.

And the first thing that the FTC did was discuss some of the issues that I've just mentioned before about the difficulty that consumer reporting agencies have in matching the data that comes in to them with the correct consumer.

And the FTC noted that one of the procedures, which was engaged in by all three of the CRAs -- they focused on the three nationwide CRAs. But they said that the procedure engaged in by all three of the CRAs with respect to the Social Security number was that if seven or eight of the nine digits matched, that was -- even though it was considered a partial match, that was considered a sufficient match to identify the consumer to the -- to the correct file. They recognized that was the procedure that was being used.

They also, of course, recognized that the -- the CRAs were -- were attempting to match name, address -- you know -- date of birth, as well as Social Security number.

So the issue was -- that -- that -- that the FTC

thought about the issue, was should we require an exact match? Should we require a nine-for-nine match with -- with the Social Security number? Should we require more identification with respect to matching? And the FTC concluded no, we should not require this.

Well, why? The reason is that if you require a more exact match, you're going to have a lot of file fragments sitting out there that don't belong to anybody, because you can't exactly match them to somebody. What that means -- what the FTC actually said is that would harm consumers.

You might have an increase in accuracy, but you have a decrease in completeness, which would mean you would have more incomplete files. And the more incomplete files would mean that fewer consumers would get credit, because creditors would not be able to evaluate all of their information, or they would get credit on high returns -- higher rates.

What the FTC also observed was that 85 percent of the credit accounts contained positive information.

So they -- they -- they looked at this. They did a thorough study. And they concluded it's not perfect, but we think, at this point, we are not going to recommend any changes to this procedure, the procedure that all three of the nationwide consumer reporting agencies follow.

Q. Let me ask you a question about error rates.

Did the FTC consider error rates when it was

reviewing the process and particularly with respect to mixed files?

A. They recognized that mixed times are a source of errors. The FTC also did a study at the direction of Congress. It was a study that took them about ten years to complete because they had to develop the methodology. They published the results in February of this year. The study dealt with the accuracy of information in consumer reports.

And what they found was that 98 percent of consumer reports contain no errors that would result in a material change in the consumer's ability to get credit or the rate that they would pay. So you have a two percent error rate.

Now, that's not great, but it's a whole lot better than it was in the early '90s, and it's getting better all the time.

There was also a study done by the Political and Economic Research Council that was published about a year before, and it found a 1 percent error rate. And these are -- these are not the types of errors that somebody has an old address, or something like that. These are the errors that could result in somebody either not getting credit or getting credit on higher terms. We are talking about a 1 to 2 percent error rate.

So that means that 98 to 99 percent of consumers are able to get -- or -- 98 to 99 percent of consumer reports

are -- can be relied on and are relied on because they completely accurate with respect to the consumers.

Q. Ms. Fortney, Mr. Hendricks testified earlier today and referenced a -- a PIRG study, which I understand that to mean the Public Interest Research Group. And I believe that the study that he referenced was in the 1990s.

Are you familiar with that study?

A. I'm familiar with that study. I'm familiar with even a later study done in 2004. I'm also aware that the Consumer Financial Protection Bureau looked at that study and said that the results were not reliable.

Why? Because, first of all, the sample size was 154. That's much too small to -- to form any conclusions. And, secondly, the people who participated in -- in the study were employees of PIRG; their family and their friends. So the -- even the Consumer Financial Protection Bureau said there is likely bias here.

And there's -- there's an agency called the GAO, which is the Government Accounting Office. And what they -- what they do is investigate -- or sort of -- investigate information, provide information to Congress about various laws that Congress is interested in.

And the GAO looked at these same PIRG studies and came to the same conclusion as the Consumer Financial Protection Bureau, which is that these -- that this study -- or

these studies by PIRG -- are not reliable.

Q. Mr. Hendricks also referenced generally to media coverage concerning credit reporting issues and mixed files.

Do you also follow media coverage with respect to this industry?

A. I do follow media coverage, and I find a lot of it to be very inaccurate, to be sensationalist. And here's my own take on it, which is the idea that, you know, 99, 98 percent of the time reports are being provided in a way that enables consumers to get credit. That's not a headline. The headline is this one person or that one person had difficulty getting inaccurate information removed from their file.

So I think the problem is -- is media stories. And, again, I don't know exactly which ones to which Mr. Hendricks has referred. But the ones that I have seen, that I question, are the ones that attempt to sensationalize the -- the problems that individuals may have, without necessarily having all of the background, having all of the facts, and also, of course, not looking at this in terms of how the system works for the vast, vast majority of consumers.

Q. Now, based on your experience as having been in a position of the Bureau of Consumer Protection at the FTC, is it your understanding that the FTC would seek enforcement of prior agreements of assurance or consent decrees if they believed that the credit reporting agencies were in violation of those?

A. Yes. The Federal Trade Commission regularly enforces its consent decrees, the orders it has against companies. It also reviews compliance by companies with those orders.

And if it had found any problems with these or other orders, it would have brought enforcement actions.

Q. Let me switch gears for a moment. And if I can ask you to tell us -- or tell the jury what you reviewed in preparation for your testimony with respect to Ms. Miller's particular situation.

A. Well, I reviewed her complaint. I reviewed her deposition testimony. I reviewed the deposition testimony of -- of two of the witnesses for -- for Equifax who were involved in the process. And I also reviewed the deposition testimony of Mr. Hendricks. I've reviewed the initial reports that he prepared in this case. And I reviewed the policies and procedures and training manuals of Equifax.

Q. Let's talk a little bit about those policies and procedure manuals.

And if I can ask you to just direct your attention to -- do you have a notebook of exhibits?

A. Yes, I do.

Q. Okay. And if I can just ask you to take a moment, and look at the exhibits that are marked 116 through 134.

And just flip the -- through those for a moment, please. And that way the jurors can do so as well.

And after you've had a chance to look at those, let me know if those policies and procedures were some of those that you reviewed in preparation for this case.
A. (Pause, referring.)
Q. Done?
A. Done. I looked at them before, so I had an advantage over the jury.
Q. Does this represent all of the policies and procedures and manuals that Equifax has concerning consumer disputes and mixed files?
A. I don't believe these are all of the manuals.
These are some of the ones that I reviewed. I did review others. And these are included in ones that I reviewed.
Q. Are those excerpts from some of the -- and when I say "excerpts," just -- are partial pieces of the manuals, as opposed to complete manuals, in some circumstances?
A. Yes.
Q. And are the manuals themselves much more voluminous?
A. Yes, they are.
Q. And then, as part of your review, did you go through the policies and procedures manuals and the training manuals?
A. Yes, I did.
Q. And did you review those manuals with respect to consumer disputes?
A. Yes, I did.

Q. Is there a -- a requirement concerning the verification of a consumer identity?

A. Yes. They're very specific provisions of what is necessary to identify a consumer who is making a dispute.

Q. Why is that important?

A. Because, as I mentioned before, identity theft is a problem. And consumer -- the consumer reporting agencies are concerned about the wrong person inserting information into a consumer's file. A -- a common tactic of someone who wants to commit identity theft is to change the address, because now all of the mail is going to them. They've set up new accounts. That's all going to them.

So it's really important for the CRA that it properly identify the consumer before beginning a dispute or making any changes to the information in the file.

Q. And do some of those policies and procedures also specifically address mixed file procedures?

A. Yes, they do.

Q. And do they address the training of agents to prepare them for various mixed file scenarios?

A. Yes, they do.

Q. And have you reviewed the specific scenario, with respect to Ms. Miller?

A. Yes, I have.

Q. And how would you characterize that, based on your

experience, in terms of what you've seen in the way of mixed files?

A. Well -- I'm sorry. Could you --

Q. Sure. That was not a very clear question. I apologize.

When you -- how would you describe Ms. Miller's situation, in terms of what happened in that particular instance in the mixing of files?

A. Well, I think it's undisputed that her file was merged with that of another consumer, and the evidence also indicates that Equifax provided her file disclosure, even though she did not give Equifax the necessary verification of her Social Security number.

And that was in contravention of the -- the policy that -- policies that Equifax had and that I believe every consumer reporting agency has. That they must identify the -- verify the identity of the consumer before they provide the -- the report to the consumer.

Q. And as a result of that, did that trigger next steps with respect to her file that was unusual under the circumstances?

A. Well, I think the first thing is, this was a very, very unusual situation, to have this close a match. I had never seen it before.

You know, we have such a close -- we have the same name, including the same middle initial. And then, of course, a Social Security number, that was so close.

So after she had received her file and saw the information she identified as not being hers, she then disputed this to -- to Equifax.

The problem was that they didn't know that she had been able to receive her file with incomplete verification of her Social Security number.

So I think that was one of the problems in the process as Equifax was attempting to resolve her dispute.

Q. And does that circumstance create a confusing scenario for purposes of -- of communication from the consumer to the agents?

A. Again I'm not quite sure I understand that.

Q. I'll withdraw it. Let me try a different approach here.

Based on your review and analysis of Equifax's policies and procedures and the circumstances of this case, could you give us your expert opinion as to whether, those procedures were reasonable?

A. Well, I think the jury, when they have a chance to review these policies and procedures, will -- will see how -- how thorough they are.

The thing that struck me also about these policies and procedures was how they are periodically updated. That is one of the elements, in my experience, of reasonable procedures.

That the company is not just satisfied with the way

things were, you know, 20 years ago, but they are continuing to look at these policies and procedures as -- as new developments occur.

So in my experience, and based on my expertise, I would say these policies and procedures that Equifax has for dealing with consumer disputes, including those that involve mixed files, are reasonable, are consistent with the industry standards.

Q. And do you have an opinion as to whether Equifax, over the years -- since the early 1990s, when those agreement of assurances and any consent orders were entered -- as to whether Equifax has changed and updated its policies and procedures over that time?

A. Yes. And, again, I think the -- the dates on the policies and procedures reflect that.

Q. And with respect to the Social Security number match of seven to nine, do you think by applying that, Equifax disregarded Mrs. Miller's Social Security number?

A. No. I think Equifax followed the procedure that is the standard in the consumer reporting agency and the procedure that the Federal Trade Commission studied and concluded does not have to be changed.

Q. You talked a little bit about some of the statistics involved in this industry, which range in the millions and millions.

Could you also help the jury understand how many times a name can arise in -- like a last name, like a common name. You know, such as Johnson, or a name like that. How many times that --

A. The Consumer Financial Protection Bureau, in the study I mentioned before, dating from December of last year, noted that in -- in America, there are 1.8 million consumers with the last name Johnson. And another million consumers with the last name Davis. And there are many other common last names. And, again, that is one of the problems that consumer reporting agencies have to face when they are trying to match the data to the correct consumer.

Q. Earlier, Mr. Hendricks also testified about how closed this industry is, and that consumers don't have access to this type of information.

Could you explain to jury what your understanding is, in terms of -- of the status of this industry today?

A. I think this is a very transparent industry, and that's not just my conclusion.

The Consumer Financial Protection Bureau, in their study, found that 44 million consumers get their free credit report each year. 44 million.

And I also know that each time a consumer gets their free credit report, or any consumer report from a credit bureau, they get a statement of their rights under the Fair

Credit Reporting Act. So they are informed as to how they can protect themselves, protect their rights, exercise their rights with respect to their own credit information.

In addition, each time a consumer applies for credit these days, many creditors, in order to comply with what's called the Dodd-Frank credit score structure, and was to comply with a new law -- each time a consumer applies for credit, the creditor gives them a -- a copy of their credit score and an explanation of how credit score -- scoring works and what goes into their particular credit score. What are the four major factors that influence their credit score.

So as a result, as consumers today apply for credit cards or auto loans or mortgage loans, they are getting their free credit score disclosure. So, as a result, I believe millions of consumers are getting their credit scores on a regular basis.

And I think what's also significant is the Consumer Federation of America. Now, that's an organization that represents consumers. It does not represent anybody in the industry.

The Consumer Federation of America published a study last year, and found that the vast majority of Americans today have a very good understanding of their credit reports and their credit scores, and particularly their credit scores.

They found that depending on the question they asked,

80 to 90 percent of consumers understood how credit scores are used, who provides them, what goes into a credit score, how consumers behave in paying their bills affects your credit scores. And they also -- a very high percentage -- understood the importance of seeing their credit report each yeah and checking for the accuracy of that information. This is a very transparent industry.

And I have to say 20 years ago, or in the early '90s, it was not. Consumers could not get their credit score at all. They couldn't buy it. They couldn't get it. And they were not entitled to a free credit report unless they were declined for credit. So the world has changed dramatically in the last 20 years, and for the better.

Q. And as the world has changed dramatically in the last 20 years, has Equifax changed its policies and procedures to address that?

A. Absolutely. Absolutely.

Q. Let's go back to the specific situation that occurred here, from your review. Is it your -- your review of the materials relating to Ms. Miller.

Is it your understanding that a -- a single Equifax agent handled her disputes, or whether there were multiple agents involved?

A. It appeared to me that there were multiple agents involved.

Q. And based upon your review of the information that they were receiving at the time of her disputes, what -- what -- what information did the Equifax employees have concerning that -- that credit report that would have indicated to them whether or not they were dealing with the right consumer?
A. Well, again, from the -- when -- when you are looking at the reasonableness of a CRA's procedures and the following of those procedures, you have to put yourself in the place of what did these people know at this time. Not what did they know today or what do we know today. This is actually the standard. The test is, what did they know? What did they reasonably know at the time?

And it appears to me that they reasonably knew or believed that they did not have the proper identification from Ms. Miller when she continued to dispute the information. And that was because she had gotten the report initially from -- her free credit report without identifying her Social Security number.

But see, the agents looking at that -- you know, after she got that report, they didn't know that. What they knew was they had one file on Ms. Julie Miller, with certain identifying information. And what she was providing wasn't matching.
Q. So could you distinguish for a moment the difference between a mixed file and a merged file.

A. Well, a merged file is a type of mixed file.

In this -- a mixed file can occur when just some information that, for instance, should go to -- let's assume that a father and son have the same name, senior and junior. But creditors don't always put in, you know, senior and junior. So you could have a mixed file. Then you have a file for the senior and a file for the junior. Some goes to the senior file, some to the junior file.

That is probably the most common type of mixed file. And mixed files, by the way, are not that common. They're about 1 to 2 percent of the number of files at consumer reporting agencies. And that goes back to the FTC study that I mentioned before about mixed files. So you have a very small percentage of files that are mixed files.

In this case, you didn't have a mixed file. We had some information for one Julie Miller and one information for another Julle Miller. You had this information merged together. That makes it extremely difficult to determine what information really should pertain to this Julie Miller.

Q. Now, in this case, if -- would it have been more work for the agents to have reinvestigated and sent out requests for information to the furnisher, as opposed to what they were doing in response to her communication?

A. Well, the procedures are that no investigation should begin until Equifax has the proper identification from the

consumer. So until they receive that identification, they should not have begun any -- any investigation. This goes back to the concern about fraud, identity theft, corruption of data in -- in the files.

So what they did was keep asking her for verification of her identifying information. That required the agent to go and determine which letter to send. And that's a hard decision sometimes when you have a situation like this, which is very unusual.

So they had to go out and figure out which letter to send. They had to generate that letter. That letter then had to be mailed out. The agents are sitting there were their computer terminals, they have access to the EOSCAR system. All they have to do is enter into the EOSCAR system, the consumer's dispute, and it goes automatically to the furnisher. That would have been a much more simple procedure.

Q. Let's talk a minute about information that's coming in from a consumer.

Do you agree that Equifax should always just believe the consumer when they contact Equifax and dispute information?

A. I think that would be a disaster to the consumer reporting industry, and let me explain why.

Not just the fact that we have the problem of identity theft -- and, again, that is a big problem -- but also we have the problem of credit repair organizations.

Now, I don't know if you're familiar with credit repair companies. These are the ones who promise, falsely and illegally, that they can remove accurate but negative information from consumers' reports and their files.

The way they do this is they abuse the process, which is very important for consumers when used properly. They abuse the process to dispute the information. They -- they -- they file the same disputes over and over and over again, hoping that at some point either the CRA will get tired of hearing from them. Or, alternatively, that the furnisher will get tired of verifying the information, or will not verify the information within the appropriate time.

Well, the system works in favor of the industry. It doesn't work in favor of the consumer. These consumers pay a lot of money to these companies that make these illegal promises. They violate the law. But here's the problem. They are -- these companies, these credit repair organizations are preying on consumers who are desperate. They want to get this bad information out of their file. So they are successful in getting consumers to sign up.

As a result, 30 percent of all disputes received by Equifax and the other CRAs come from customers of credit repair clinics. That's a very large percent. It ties up a lot of resources. They have to investigate every single dispute.

So if you -- if they just took the word of a

consumer, Not mine, or This isn't my information, or I want you to change this information, you would have -- it would be an invitation to identity theft and other fraud, and also would enable credit repair organizations to basically corrupt the information on which everyone relies in providing credit to consumers.

Q. Now, earlier, in Mr. Hendricks' testimony, he proffered an alternative procedure to address the mixed file situation. And I believe -- if I'm quoting this correctly -- he referred to an automated program that he would suggest to review and detect mixed files.

Are you familiar with what he is talking about?

A. I've never heard of such a thing, and I am involved in a lot of issues in this area. And I've never heard of such a thing. I don't know what he has in mind.

What I do know is that the Federal Trade Commission and Consumer Financial Protection Bureau would not require such a thing unless it were fully developed, vetted, and determined to meet the cost-benefit analysis that would be required before a CRA should implement such a program.

So without any more information, I really can't comment on it, other than to say I've never heard of it. And I can't imagine why the FTC or the CFPB would think it's a good idea.

Q. You mentioned a cost-benefit analysis. Is that a term

that the regulators use in analyzing potential programs or -- or procedures for the credit reporting agencies?
A. Yes, it is.

And that is the analysis that the Federal Trade Commission applied when studying the problem of mixed files, and determining whether it was appropriate to require more precise matching.

They said that they -- based on their study, they did not believe that they could conclude that the cost -- in other words, the harm to consumers of having incomplete files -- would offset the -- or be offset by the benefits to consumers of having completely accurate information.

They did a cost-benefit analysis and said, Based on that analysis, we do not believe that we should recommend changes to the current system.
Q. Based on your experience and expertise in this industry and your review of this case, do you believe what happened to Ms. Miller was foreseeable to Equifax?
A. Well, even though mixed files occur only about one to two percent of the time, it was foreseeable that there would be a mixed file. That's why Equifax has these procedures. This is a foreseeable event.

What was not foreseeable was that -- an Equifax agent would provide a consumer report to a consumer who had a different Social Security number than what was on file, without

requiring a -- a verification of that Social Security number. That's what was not foreseeable. And I think that was the -- the thing that Equifax, despite all of these good procedures, could not have foreseen.

Q. And in your expert opinion, with respect to the information that you've reviewed in this case, were Equifax's actions that of a reasonably prudent credit reporting agency?

A. Yes, they were.

Q. And in your expert opinion and in your review of this case, did Equifax act with reckless disregard as to Ms. Miller?

A. Not at all.

MS. SUMNER: May I have a moment, your Honor?

THE COURT: Yes, of course.

MS. SUMNER: Thank you, your Honor.

THE COURT: No further questions?

MS. SUMNER: No further questions.

THE COURT: Cross.

MR. JUSTIN BAXTER: Thank you, Judge.

CROSS-EXAMINATION

BY MR. JUSTIN BAXTER:

Q. Good afternoon, Ms. Fortney?

A. Good afternoon.

Q. My name is Justin Baxter. We've never been introduced. I'm one of the attorneys who represents Ms. Miller.

A. Um-hmm.

Q. Earlier in your testimony, you said that consumer reporting agencies are required to have reasonable procedures to ensure maximum possible accuracy. Is that correct?
A. That's correct.
Q. But that's not the legal standard under the Fair Credit Reporting Act. Correct?
A. Yes, it is.
Q. Well, let me read to you Section e of the statute.
A. Yeah.
Q. Whenever a consumer reporting agency prepares a consumer --

MS. SUMNER: Your Honor, I would ask counsel to provide Ms. Fortney with a copy of the --

THE COURT: Well, if she needs it, she'll ask for it. But given what she's described, she can probably read it to counsel.

So let's everybody get on the same page. And if you need the help, go ahead and ask for it.

Go ahead.

BY MR. JUSTIN BAXTER:

Q. Whenever a consumer reporting agency prepares a

> consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

A. Yeah. That's a -- I shortened that. That is the standard. The standard is to have reasonable procedures to assure maximum possible accuracy. Where the Fair Credit Reporting Act actually imposes that obligation is when that report is actually provided by the CRA. That's why you have that language.
Q. And you would agree that the Fair Credit Reporting Act requires consumer reporting agency not just to have procedures but to follow procedures?
A. Yes.
Q. Okay. And so that's the correct standard?
A. Yes.
Q. All right. You mentioned that there's an approximate 1 to 2 percent error rate for mixed files. Is that correct?
A. That's correct.
Q. So --
A. That's what the Federal Trade Commission reported.
Q. And so for 200 million adults in America with credit files, approximately 2 to 4 million Americans with mixed files?
A. That's correct.
Q. All right. As we discussed a moment ago, the standard under the Fair Credit Reporting Act is that the agency must follow reasonable procedures to assure maximum possible accuracy. Correct?
A. Correct.

Q. Now, in this case, Equifax merged Ms. Miller's credit file with a different person, with a different Social Security number, with a different date of birth, and a different address. Correct?

A. Correct.

Q. And that's not reasonable, is it?

A. That's not the standard.

The standard is they follow reasonable procedures to assure the accuracy, not that the report be accurate. That would be strict liability. They follow the reasonable procedures to assure the accuracy of the information. The focus is on the reasonableness of the procedures.

Q. Okay. But my question is, was it reasonable to mix Ms. Miller's credit file with a different person, with a different social, a different date of birth, and a different address?

A. What I'm saying is given the report that the Federal Trade Commission did on this -- on this issue of mixed files, that Equifax followed the industry standards, which the FTC declined to change.

Q. All right. I guess we're talking past each other.

I'm just asking --

A. No, I'm trying to answer your question. I'm just --

Q. All right. I'm just looking for a yes-or-no answer.

Was it reasonable to mix Ms. Miller's file with a

different person, with a different social, a different date of birth, and a different address?
A. Under the circumstances, yes.
Q. All right. Now, each and every time a consumer disputes information in their credit report, the agency is required to conduct a reasonable reinvestigation within 30 days. Correct?
A. Once the agency -- consumer reporting agency identifies the consumer, yes.
Q. Okay. And it's not just that they have to do a reinvestigation. The -- the statute actually defines what they have to do. Correct?
A. It's set forth -- sets forth the parameters, yes.
Q. Okay. And that includes the agency has to review and consider all of the relevant information provided by the consumer?
A. That's once the agency -- once the consumer reporting agency begins the investigation, yes.
Q. Okay. The agency must also notify the furnisher of the disputed information?
A. Once it begins the investigation, yes.
Q. Okay. The agency also has to provide all relevant information that it receives from the consumer to the furnisher?
A. Yes. Yes.
Q. The agency also has to delete any information that it

finds to be inaccurate or incomplete or cannot verify?
A. That's correct.
Q. Okay. And the agency also has to provide written notice to the consumer of the results of their reinvestigation?
A. Yes. Once they complete the reinvestigation, yes.
Q. Okay. And all of that has to take place within 30 days?
A. That is correct.
Q. And if the agency doesn't take each of those steps, that's a failure to comply with the Fair Credit Reporting Act?
A. No, it is not. Because the first step, which I mentioned, is that the agency must obtain the proper identification of the consumer before beginning the investigation.
Q. Okay. So in this case, Ms. Miller disputed the completeness and accuracy of information in her credit file. Correct?
A. That's correct.
Q. And Equifax received that dispute. Correct?
A. They received a dispute. They did not know from whom that dispute came, because they did not have the information they needed to verify the identity of Ms. Miller.
Q. Okay. Would you take a look at your book. Okay?
A. Um-hmm.
Q. If you'll turn to Exhibit (pause) 25.
A. Okay.
Q. I'm sorry. Exhibit 26, please.

A. Okay.
Q. This has been identified as a dispute package that Ms. Miller sent to Equifax.
Okay. If you'll take a look at the first page. It's marked Exhibit 26, page 1 of 8.
A. (Pause, referring.) Yes.
Q. Okay. Do you see the final sentence in the first full-body paragraph is:
I've exposed my identity by mailing requested information several times.
And she writes: And twice now, I've received someone else's credit report, with the wrong Social Security number and birth date.
A. That's what it says.
Q. Okay. That would adequately advise Equifax of -- of an issue with the credit file. Correct?
A. It -- well, the letter speaks for itself. It basically tells what her concern is here.
Q. Okay. If you'll turn to the second page.
A. Um-hmm.
Q. This is Equifax's research request form. Correct?
A. Right.
Q. And this is a document that comes with a credit file. Correct?
A. Correct.

Q. And Ms. Miller could only obtain this if she had provided enough information and documentation to obtain a credit file. Is that correct?
A. I don't know what Equifax agents look at when they provided the information of the credit file to her.
What I do know, because it's in the record, is that she did not provide the verification of the Social Security number when she initially received her report.
Q. Okay. Well, let's keep looking at this letter, because I think we'll get there.
A. Okay.
Q. So also on page 2, you see, she circles the Social Security number and date of birth.
A. Correct.
Q. And she writes "incorrect."
A. Correct.
Q. So --
A. She writes "incorrect."
Q. Right. That would put Equifax on notice that there's an issue with this credit file with the Social Security number and the date of birth?
A. Yes.
Q. Okay. Now, if you will flip with me a couple of pages --
A. Um-hmm.
Q. -- to page 6.

A. Okay.
Q. Exhibit 26, page 6.
A. Um-hmm.
Q. This is a copy of Ms. Miller's complete W-2 form. Correct?
A. Um-hmm. Correct.
Q. And it has her full, unredacted Social Security number?
A. Um-hmm.
Q. And it has her address?
A. Yes.
Q. Okay. Would you turn to the next page.
A. Um-hmm.
Q. It's Exhibit 26, page 7?
A. Um-hmm.
Q. This is an insurance bill.
A. Um-hmm.
Q. And it shows Ms. Miller's complete, correct address?
A. Right.
Q. Okay. This is enough information for Equifax to verify Ms. Miller's identity? Do you agree?
A. I really don't know, because, again, I would have to know everything else that was there at the time. I really don't know.
Q. Okay. During your testimony, you said that the standard is what's reasonable based on what they knew at the time.

A. Right. Um-hmm.
Q. Correct?
Here we have a complete document the -- the -- Ms. Miller sent to Equifax and they received.
A. Right.
Q. And she says, I'm receiving the credit file for another person.
A. Um-hmm.
Q. And then she provides the confirmation number that corresponds to that person. And then she provides her W-2 and her insurance bill.
What more could she provide?
A. Well, again, I don't -- I would have to look at everything that was available. That's outside the scope of what I've testified to.
What I'm saying is we're looking at this from her perspective, and that's a very important perspective. This is what she provided.
The other thing -- and I think there are some unknowns here -- is what did the agents have in front of them? What did they know? What did they look at? We have some information. But, again, this is not something I spent a lot of time on because I'm only talking about the -- the issues as an expert here.
I bet the jury could certainly look at the evidence.

But what I think we have to do is say that this was an unusual situation from the perspective of the agents. That's not Ms. Miller's' perspective. And I appreciate her perspective. But there are two perspectives here, and I don't know what other information the agents had, and why they did not respond in the way Ms. Miller wanted.

Q. Okay. But this is the document. We actually have a real document --

A. Yes.

Q. -- that she sent.

A. But -- but we also need to know that, you know, what they had on file, was -- was other information. We know that.

Q. Okay. What I'm asking is based upon this documentation that we have before us --

A. Right.

Q. -- was this enough to initiate a reinvestigation?

A. I -- I think that what we have here is her identifying information, the nature of her dispute.

So I think if we're just looking at this and not anything else, I would say yes. But I don't know what else was going on.

Q. Okay. So your answer to my question is yes?

A. That's correct.

Q. They should have started a reinvestigation?

A. Yes.

Q. And if they didn't, that would be a failure to comply with the Fair Credit Reporting Act?
A. I wouldn't go that far. Again, it could be, and -- it could be a failure. It could also be that they misunderstood what was there. We don't know that.
What we do know is Ms. Miller submitted this dispute, and it was not resolved to her satisfaction. That's what we know.
Q. Okay. Earlier in your testimony you said that the agency must follow reasonable procedures. Correct?
A. Um-hmm. Correct.
Q. In your review of this case file, did you see evidence that Equifax failed to follow its own procedures?
A. What I saw, yes, was that Equifax did not always follow its own procedures; including when it initially provided that first consumer report to Ms. Miller.
Q. In fact Equifax sent four different credit reports to Ms. Miller. Correct?
A. Correct.
Q. And each of those credit reports had the full Social Security number of the other person. Correct?
A. That's what -- because that's what Equifax had on file.
Q. And the date of birth?
A. That's what they had on file.
Q. And that other person's accounts?

A. That's what -- that's what they had on file. They thought they were providing the complete file to Ms. Miller.
Q. Okay. But it was also your testimony that under their procedures they weren't supposed to send any of those credit files to Ms. Miller. Correct?
A. That's correct.
Q. Okay. So those four times, Equifax ignored its own procedures?
A. I didn't say they ignored their own procedures. I don't know why they provided a report to Ms. Miller when she did not provide, from the perspective of the agent, the necessary identifying information and verification of that identifying information.
Q. Okay. Okay.
A. Are we saying the same thing?
Q. Did you happen to review -- you said you read some deposition testimony in this case. Correct?
A. Correct.
Q. You read the deposition of Ms. Mixon.
A. I think so, yes.
Q. And she talked about some of the reinvestigations, or -- or some of the disputes. Correct?
A. Correct.
Q. And in fact she said that on some occasions, Equifax was supposed to process reinvestigations, but the agents didn't do

that?
A. That's what I think her testimony is, yes.
Q. And she said that when they didn't do that, that was also outside of procedure. Correct?
A. I don't recall exactly what she said. What I do recall is that she said -- and I don't think there's an issue here -- that Equifax agents did not always follow the procedures.
Q. Okay. So -- so there were instances with regard to investigations where Equifax didn't follow its procedures. Correct?
A. The -- the -- the record reflects the fact that Equifax did not respond to Ms. Miller's disputes and did not always follow its procedures.
This -- you know, you really don't need an expert to tell you that.
MR. JUSTIN BAXTER: Judge, those are the questions I have of this witness.
THE COURT: Thank you.
Redirect.
MS. SUMNER: Your Honor, we have no redirect.
Thank you.
THE COURT: All right. Thank you. You are free to go Ms. Fortney.
THE WITNESS: Thank you.
(Conclusion of excerpt.)

--oOo--

I certify, by signing below, that the foregoing is a correct transcript of the oral proceedings had in the above-entitled matter this 24th day of July, 2013. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, RDR, CRR, FCRR, CE